In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 999

JULIUS GODENY AND MARY GODENY, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

The sole question presented is whether the record sustains the two courts below in their concurrent findings of fact on the basis of which the Tax Court determined deficiencies in taxpayers' income tax liability for 1956, 1957, and 1958 and upheld fraud penalties for each of these years.[1] In a one-paragraph *per curiam* opinion, noting that the questions raised were

[1] The years 1953, 1954, and 1955 were also considered by the Tax Court in its findings and opinion. As to those years the Tax Court decided that taxpayer's returns were not fraudulent and consequently that the years were barred by the statute of limitations. (R. 195a, 200a–201a.) The Commissioner did not seek review of the Tax Court's decision.

purely factual and correctly resolved by the Tax Court, the court of appeals affirmed. 339 F. 2d 262.

Julius Godeny and Mary Godeny are husband and wife. (R. 188a.) Julius[2] derived income for the years 1956 through 1958 from his automobile-agency business, leasing of buildings and other real estate, interest, and occasional capital gains when real estate was sold. (R. 188a–189a.)

The Commissioner computed taxpayer's income for the years 1956 through 1958 by use of the net-worth-plus-nondeductible-expenditure method, because taxpayer's records were "far from adequate," "incomplete," "in some instances, without proper documentation" and knowingly falsified. (R. 196a.) The net worth computation is set forth in the Tax Court's findings (R. 194a) and indicates that taxpayer had unreported income of $2,798.03, $57,025.04, and $13,388.82 in the respective years in issue (R. 196a).

Taxpayer's main claim (Pet. 12–20) is that the net worth statement fails to include an alleged cash hoard of $95,000. The only evidence that such cash existed was the testimony of taxpayer and his relatives which the Tax Court found "implausible and not at all persuasive." (R. 198a.) In addition, as in the case of *Holland* v. *United States*, 348 U.S. 121, the Government negated the possibility of accumulation of such a sum by a reconstruction of taxpayers' financial history. (Exs. J, P; R. 162a–163a; Supp. Stip. 5–6, 2d Supp. Stip. 3, and Ex. 13–I.) Moreover, the Tax Court held that even accepting taxpayer's "story of

[2] Julius Godeny is sometimes hereafter referred to as "the taxpayer."

the $95,000 on hand as of December 31, 1955" (R. 198a), that sum, on the record facts, did not account for the changes in net worth over the period here involved (R. 198a). *Shahadi* v. *Commissioner,* 266 F. 2d 495 (C.A. 3), certiorari denied, 361 U.S. 874; *Schwarzkopf* v. *Commissioner,* 246 F. 2d 731 (C.A. 3). Taxpayer also contended (Pet. 20) that the net worth statement was incorrect with respect to an alleged $5,892 loss on the sale to his son-in-law in 1956 of certain inventory and equipment as part of Julius' Clinton, New Jersey, automobile agency (R. 68a, 188a, 199a–200a). The Tax Court properly rejected this contention, finding that the unsupported recitation of various figures by petitioners' accountant was "vague and unsatisfactory" and that taxpayer had not "met his burden as to this item." (R. 199a–200a.)

Finally, taxpayer's contention (Pet. 20–23) that the Commissioner did not sustain his burden of proof as to fraud is plainly without merit. The net-worth statement indicates that, over the three-year period here involved, taxpayer underreported taxable income by $73,211. (R. 194a–195a.) The Commissioner affirmatively established a likely source of taxable income to explain the increase in net worth (Julius' automobile agency) and also negated taxpayer's sole explanation as to a nontaxable source of this money (his cash hoard). This alone established fraud. *Shahadi* v. *Commissioner, supra; United States* v. *Massei,* 355 U.S. 595; *United States* v. *Adonis,* 221 F. 2d 717 (C.A. 3); *Goe* v. *Commissioner,* 198 F. 2d 851 (C.A. 3), certiorari denied, 344 U.S. 897; *Commissioner* v. *Thomas,* 261 F. 2d 643 (C.A. 1). In addition,

the government showed that Julius recorded fictitious trade-ins in connection with the sale of some twenty cars, and by means of raising checks sought to inflate the cost of the building housing his automobile agency.[3] See *Holland* v. *United States, supra; United States* v. *Adonis, supra; Schwarzkopf* v. *Commissioner, supra; Shahadi* v. *Commissioner, supra; Goe* v. *Commissioner, supra; Anderson* v. *Commissioner,* 250 F. 2d 242 (C.A. 5); *Lipsitz* v. *Commissioner,* 220 F. 2d 871 (C.A. 4).

In sum, the decision below turned upon the particular circumstances of this record and is correct. There is no conflict nor any other ground warranting review by this Court.

Respectfully submitted,

ARCHIBALD COX,
Solicitor General.
LOUIS F. OBERDORFER,
Assistant Attorney General.
I. HENRY KUTZ,
JEANINE JACOBS,
Attorneys.

APRIL, 1965.

[3] In its findings the Tax Court listed each of the twenty-one checks which it was stipulated had been raised by taxpayer in 1957 and showed the amount by which each check was raised. (R. 191a.)

U.S. GOVERNMENT PRINTING OFFICE : 1965